

FROM Starkweather & Associates 8017481030

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App. No. 10/826,990
Attorney Docket 3053.2.1 NP

Amendments to the Drawings

None

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Remarks

Applicant thanks the Examiner for the Written Office Action. Further, the Applicant thanks the Examiner for the telephone interview of 28 November 2006, where the Claims were discussed. No agreement was reached on Claim language.

With regard to the substantive portion of the Written Office Action, Claim 22 was rejected under 35 U.S.C. 112 as being indefinite. Further, Claims 1, 2, 5 – 7, 9, and 11 were rejected under 35 U.S.C. 102(e). More, Claims 3, 8, 10, and 21 – 25 were rejected under 35 U.S.C. 103(a).

In response to the Written Office Action, Claims 1, 7, 21, and 22 are amended. The Applicant believes that the amendments to the claims find support in the specification and particularly in Figure 1 (showing a flat window well liner) and paragraphs 0030 and 0032-0036, wherein the process of cutting a flat window liner to shape and then installing the flexible liner in a window well is described. Claim 26 is new.

Rejections under 35 U.S.C. 112 ¶2

Claim 22 is amended and does not include any trade names. Accordingly, the Applicant respectfully requests removal of the rejections under 35 U.S.C 112.

Rejections under 35 U.S.C. 102(e)

The Claims are amended to include subject matter not disclosed by the cited art. Accordingly, the Applicant respectfully requests removal of the rejections under 35 U.S.C 102(e).

Rejections under 35 U.S.C. 103(a)

The Claims are amended to include subject matter not disclosed by the cited art.

Accordingly, the Applicant respectfully requests removal of the rejections under 35 U.S.C 103(a). Further, the present invention solves a long-felt.

Arguments

“Anticipation under 35 U.S.C. §102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention. . . Whether such art is anticipating is a question of fact.” *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20, 57 USPQ2d 1057, 1061 (Fed. Cir. 2000). The Applicant notes that the art of record does not include every limitation of the amended claims.

The Applicant notes that the term flexible as used in the application refers to a characteristic of elastic deformation without substantial material memory. For example, the term “flexible” is used in paragraph 0036 to describe tubing. In the art, flexible tubing is elastically deformable. This is in contrast to the deformability of sheet metal and other materials that are not elastically deformable, but instead deform to a particular shape under force and there remain when the force is removed. Further, polyurethane sheets of the thicknesses described in the application are inherently elastically deformable as described.

Particularly referencing Bryant, the Applicant would like to note several important differences. First, Bryant includes a sheet metal backing that is not flexible as required in the present claims. Further, Bryant notes that the invention of Bryant could

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be used as a structural support for a window well, in place of a well shield (Bryant 0021), while the present invention could not. The present invention requires the presence of a well shield.

More, Bryant includes a plurality of separate sheets of materials coupled together in a predefined shape (See Bryant 0007). Accordingly, a product produced according to Bryant would be shaped and sized to only fit a particular window well shield and only if that window well shield had not been substantially deformed during installation. In practice window well shields are often deformed during installation and backfilling process. Accordingly, pre-shaped products, such as those described in Bryant are often fail to properly fit.

Further, a product produced according to Bryant would not be able to fit in a square window well as the corrugating on the window well shield would stop the product from slipping downward into place during installation. Where the product is sized substantially smaller to avoid that problem, then the user risks violating the building code requirements of egress spacing. Alternatively, using a product produced according to the present invention, a user would be able to snugly fit the liner to the window well shield regardless of the shape of the window well shield. This is true even in the case of a dent protruding inwardly through the shield.

The present invention includes a single sheet that elastically conforms to an infinite number of shapes. This is particularly important in the field of the invention, wherein window well shields come in a great variety of shapes and sizes, and even when standardized, the realities of the installation process and environment create great variety in exact dimensions of the installed window well shields. Accordingly, the present

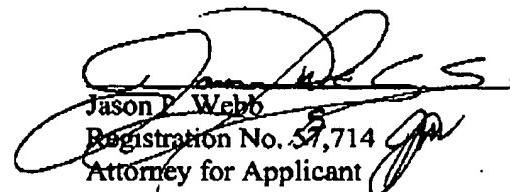
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invention serves a need long felt in the industry. In particular, the present invention may be easily customized on-site to accommodate the wide array of requirements for shape and size of window well shields found in practice.

Conclusion

For these reasons, it is believed that none of the prior art teaches the claimed invention. Furthermore, it is believed that the foregoing amendment has adequate support in the specification, and accordingly there should be no new matter. Applicant believes the pending claims have addressed each of the issues pointed out by the Examiner in the Office Action. In light of the foregoing amendment, the claims should be in a condition for allowance. Should the Examiner wish to discuss any of the proposed changes, Applicant again invites the Examiner to do so by telephone conference.

Respectfully Submitted,



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